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| 09/753,428  | 01/03/2001  | Kung-Liang Kevin Sung | IPC-109A, Case 25   | 1174             |
| 7590  | 05/17/2004  |                       | EXAMINER            |                  |
| KENNETH P. GLYNN, ESQ.<br>24 Mine Street<br>Flemington, NJ 08822-1598 |             |                       | KUHNS, ALLAN R      |                  |
|   |             |                       | ART UNIT            | PAPER NUMBER     |
|   |             |                       | 1732                |                  |

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 051104

Application Number: 09/753,428

Filing Date: January 03, 2001

Appellant(s): SUNG ET AL.

**MAILED**

MAY 17 2004

**GROUP 1700**

Kenneth P. Glynn  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed February 19, 2004.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The rejection of claims 21-24 stands or falls together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) *ClaimsAppealed***

A substantially correct copy of appealed claims 21-24 appears on pages 15-18 of the Appendix to the appellant's brief. The minor errors are as follows: on the next-to –

last line of claim 21, "Harness" appears where "Hardness" is intended, and on the last line of claim 21, the Appendix shows "ASTM D2240" instead of "ASTM 2240".

**(9) Prior Art of Record**

5,951,927 Cope 9-1999

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The appealed claims are being addressed in accordance with MPEP 2113. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps.

Claims 21-24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cope. Cope discloses the basic claimed synthetic wood-like product structure as imputed from the method steps practiced. Note the PVC or vinyl chloride resin, the wood flour or natural cellulosic product and foaming agent disclosed by Cope in the compositions described in column 6. Note further the disclosure of a lubricant in the compositions described in column 6. It is submitted that the product formed by Cope possesses substantially the same low density, stable dimensions, wood-like surface quality, flammability resistance, outdoor weather durability and a Shore Hardness within the claimed range as the instantly claimed product based the composition used and the manner of production disclosed by Cope. Cope discloses an article with an embossed surface (i.e., a surface with a raised design, as evidenced by the protruding portions of the article illustrated in Figs. 4 and 5. Cope also teaches a product having an external foam skin and a foam core in the

disclosure set forth from column 5, line 64 to column 6, line 3. Note that Cope explicitly states that certain remaining portions 72, 74 of the profile illustrated in Fig. 4 may be left without a hard skin, thus informing one of ordinary skill in the art that at least portions of the article may be left with a foam surface or skin. In addition, Cope states only that the hard skin 66,68 "may be formed on the outer portion of the profile 70", thus informing one of ordinary skill in the art that such a hard skin may not be formed.

Alternatively, it would have been obvious to one of ordinary skill in the art to produce a wood-like product of low density, having an external foam skin, since Cope discloses that portions of the profile may be left without a hard skin, in order to produce a substitute for products made entirely from wood.

**(11) Response to Argument**

Appellant argues that the present invention board includes an embossed textured outer surface while the Cope board must be a smooth surface. This is not persuasive because Cope discloses an article having embossed or raised surface portions in Figs. 4 and 5.

Appellant also argues that by maintaining temperatures of rollers above the PVC softening point temperature, the surface of the PVC material is kept soft and an embossed texture results while Cope makes no use of rollers which are temperature controlled. This is not persuasive since Cope in fact teaches the formation of an article having embossed or raised surface areas.

Appellant asserts that the present invention board is formed from a product having a foam skin and a foam core. Appellant then argues that Cope is silent with

regard to whether the remaining portions 72, 74 are foamed or not and that the outer portions 66 and 68 are always hard skinned which is different from the foamed skin of the present invention. This is not persuasive because one of ordinary skill in the art is informed that portions of a foamed body may be left without a hard skin. It is the examiner's position that such a foamed body, absent a hard skin, would have a foam surface or skin. While it is correct that the outer portions 66 and 68 are always hard skinned, these portions are not present on the entire article formed by Cope and are not always required to be present on the surfaces on which they appear in Fig. 4.

Appellant advances another interpretation of Cope such that the remaining portions with hard skin or without hard skin refers to the characteristic of the remaining portions, such that, under this interpretation, the outer skin would still be hardened. The examiner finds no basis in Cope for this interpretation. To the examiner, if the remaining portions (which Cope explicitly states may be left without a hard skin) retain the characteristic of the underlying foam body, the surface or skin would be foam.

Appellant argues, with regard to Cope, that since the temperature of the jacket 52 of the shaper 58 is kept at a temperature lower than the softening point, the surface layer of PVC material is immediately solidified and foaming cannot occur in the surface while the present invention, in contrast, uses slow cooling. Actually, the shaper in Cope is designated as 48. While it is agreed that such cooling contributes to the formation of a hard skin, the examiner notes that Cope still explicitly teaches that portions of the profile may be produced without a hard skin, and it is the examiner's position that the descriptions of the process conducted by Cope do not obviate this explicit teaching.

Appellant also argues that the Cope disclosure creates a different type of product from the current invention because products of different thickness can be produced or the thickness of the products produced can easily be adjusted. This argument is not commensurate in scope with the claims since the claims do not have limitations concerning article thickness or adjusting article thickness.

Appellant further notes that the Cope patent, at column 6, lines 6-11, states that after the profile is cured and hardened, various finishes may be applied and hot foil stampings may also be applied for further decorative effect. Appellant argues that this disclosure in Cope shows that the profile of the Cope product has a smooth surface in contrast to the embossed surface of the present invention. This is not persuasive, at least for the reasons that Cope indicates that different surface portions of the product produced may possess different characteristics and that Cope teaches that the article formed may have embossed or raised surfaces.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

*Allan R. Kuhns*

ALLAN R. KUHNS  
PRIMARY EXAMINER AU 1732

May 12, 2004

Conferees

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